

The claimant's testimony that he injured his low back in addition to his right shoulder as a result of a slip and fall at work on May 20, 1994, is uncontroverted. Claimant was initially treated at the emergency room of Wesley Medical Center for complaints of shoulder pain. At that time his low back had not started hurting. Claimant was later seen by Dr. James Joseph on May 24, 1994, and again on June 2, 1994, when he was released from further medical care for his shoulder and to return to work. In between these appointments, claimant's back started hurting and he informed his assistant manager of this. According to claimant, he was instructed not to notify anybody about the low back

injury until further notice. Therefore, at his June 2, 1994, appointment with Dr. Joseph, he did not mention his back complaints. Claimant was subsequently authorized to obtain treatment for his back from a physician of his own choice and claimant decided to go to Dr. Anthony Pollock with whom claimant had treated for a previous injury. Dr. Pollock was told about both the shoulder and the low back complaints. The medical records of Dr. Pollock, which are in evidence, establish that claimant was treated for the low back injury.

Respondent admits that claimant reported a work-related injury to his shoulder on May 21, 1994, but denies that claimant's purported back problems arose out of and in the course of his employment. In support of its position, respondent points to the employee incident report, prepared by claimant, which identifies only an injury to his right shoulder. In addition, the initial medical treatment provided at Wesley Medical Center and the treatment notes by Dr. Joseph make mention only of right shoulder pain. The first documented complaints of back pain are the records of Dr. Pollock dated June 10, 1994, some twenty (20) days after the alleged work injury.

In the absence of any evidence of an intervening accident or injury, the claimant's testimony relating this condition to his employment is uncontroverted. The history given Dr. Pollock about having injured his back at work while lifting a box, is consistent with the patient complaint entry on the emergency room records of Wesley Medical Center on May 21, 1994, which reads that the patient was lifting a box and lost his grip, he felt something snap and thought it was his low back, but the pain was in his right shoulder. Dr. Pollock's notes of June 10, 1994 state, "He experienced a popping sensation in his back and then had pain in his shoulder." Those notes also describe the back pain as starting about two days after the injury. The Appeals Board is persuaded, based upon the record as it currently exists, that more probably than not claimant's low back injury did arise out of and in the course of his employment with respondent.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 20, 1994, Order of Administrative Law Judge John D. Clark should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Dale V. Slape, Wichita, KS
Ronald J. Laskowski, Topeka, KS
John D. Clark, Administrative Law Judge
George Gomez, Director